

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT
RESIDENTIAL OR OUTDOOR PROGRAMS
STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 24.101.413 renewal, 24.181.401)	ON PROPOSED AMENDMENT
registration fee schedule, and adoption of)	AND ADOPTION
NEW RULE I fee abatement, NEW RULE)	
II licensing fee schedule, and NEW RULE)	
III renewals)	

TO: All Concerned Persons

1. On April 7, 2008, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Private Alternative Adolescent Residential or Outdoor Programs (board) no later than 5:00 p.m., on April 2, 2008, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpap@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted Chapter 294, Laws of 2005 (House Bill 628). The purpose of the 2005 legislation was to examine the benefit of licensing private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. The board subsequently promulgated rules to implement the provisions of this legislation.

Following the completion of the registration process accomplished under 37-48-103, MCA, and the subsequent report written by the board, the 2007 Legislature concluded that the licensing and regulation of private alternative adolescent residential or outdoor programs is necessary as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. The 2007 Montana Legislature enacted Chapter 178, Laws of 2007 (House Bill 769), an act requiring mandatory registration and licensure of these programs; allowing for provisional licensing; providing for background investigations of certain employees and managers and allowing for a waiver; directing the department to adopt rules regarding program criteria; requiring department inspection of the programs for licensure and every

three years; allowing inspections in response to complaints; providing penalties and notification procedures; revising definitions; establishing criteria for ensuring public health and safety for program participants; and requiring proof of insurance.

It is reasonable and necessary to amend and adopt the following rules to establish renewal dates and program licensure fees to comply with the provisions of 37-1-134, MCA, and to keep the board's fees commensurate with program costs. The proposed rule changes are necessary to establish sufficient licensure fees to enable the board to effectively operate and further implement the 2007 legislation. Additional rules will follow as acted upon by the board.

4. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(z) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(aa)	<u>Private Alternative Adolescent Residential or Outdoor Programs</u>	<u>Program</u>	<u>Annually</u>	<u>June 30</u>

(aa) through (7) remain the same but are renumbered (ab) through (7).

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: It is reasonable and necessary to amend this rule to include the board's renewal requirements in the division renewal rule to comply with 37-1-141, MCA, which requires that license renewal dates be set by department rule.

5. The board is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.181.401 REGISTRATION FEE SCHEDULE (1) All programs must register prior to being licensed.

(4)(2) The registration fee covers a ~~two~~ one year period.

(2)(3) Registration fees are calculated according to the program's average daily census:

(a) 0-10 participants	\$ 750 <u>500</u>
(b) 11-50 participants	1,750 <u>3000</u>
(c) 51-100 participants	2,000 <u>6000</u>
(d) 101 and more participants	3,000 <u>9000</u>

~~(3)(4)~~ All existing programs must be registered within 30 days of the adoption of these rules. For any program previously registered under the 2005 legislation and which registers between [the effective date of these rules] and June 30, 2008, such program will have until June 30, 2009, in which to complete the registration requirements.

(5) All programs registering between [the effective date of these rules] and June 30, 2008, are required, at the same time they submit their registration application and registration fee, to submit their provisional licensing fee.

(6) For any program registering at any time between July 1, 2008, and June 30, 2009, such program shall pay both their registration fee and their provisional licensing fee at the same time. The provisional licensing fee shall cover the period up to and including June 30, 2009.

(7) Any program that is registered and/or licensed (provisional or otherwise) during the period between July 1, 2008, and June 30, 2009, will be required to renew the license on or before June 30, 2009.

~~(4)(8)~~ All fees provided for in this rule are nonrefundable and are not prorated for portions of the registration period.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-134, 37-48-103, 37-48-107, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to ensure board fees remain commensurate with associated costs as required by 37-1-134, MCA, and to generate timely needed revenue. It is estimated that 24 programs will be affected by the proposed fee changes and result in additional annual board revenue of \$70,000. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

6. The proposed new rules provide as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Private Alternative Adolescent Residential or Outdoor Programs adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: It is reasonably necessary to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the board. The department previously adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

NEW RULE II LICENSING FEE SCHEDULE (1) Programs will be licensed annually. Beginning July 1, 2009, the annual period will run from July 1 to June 30 of the following year.

(2) Licensing fees are calculated according to the program's average daily census:

- | | |
|-------------------------------|--------|
| (a) 0-10 participants | \$ 260 |
| (b) 11-50 participants | 800 |
| (c) 51-100 participants | 1600 |
| (d) 101 and more participants | 2400 |

(4) All fees provided for in this rule are nonrefundable and are not prorated for portions of the licensing period.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-134, 37-48-103, 37-48-106, MCA

REASON: The board determined it is reasonable and necessary to adopt this rule to establish licensure fees commensurate with associated costs as required by 37-1-134, MCA, and to generate timely needed and adequate revenue to enable the board and department to implement the 2007 legislation. It is estimated that 24 programs will be affected by the proposed new licensure fees and result in \$19,680 of additional annual revenue.

NEW RULE III RENEWALS (1) Beginning in calendar year 2009, renewal notices will be sent as specified in ARM 24.101.414.

(2) All licenses must be renewed pursuant to 37-1-141, MCA. The renewal date is set by ARM 24.101.413.

(3) The licensing renewal fees are calculated according to the program's average daily census:

- | | |
|-------------------------------|--------|
| (a) 0-10 participants | \$ 760 |
| (b) 11-50 participants | 3800 |
| (c) 51-100 participants | 7600 |
| (d) 101 and more participants | 11,400 |

(4) All fees provided for in this rule are nonrefundable and are not prorated for portions of the licensing period.

(5) Renewals that are in any manner incomplete on receipt by the department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal must be accompanied by:

(a) the appropriate renewal fee. Checks returned to the department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received; and

(b) any other material or documentation the board may require for renewal as identified on the renewal notice.

(6) Completed renewals submitted to the board after the date specified in ARM 24.101.413 shall be considered late and subject to a late penalty fee as specified in ARM 24.101.403.

(7) The provisions of ARM 24.101.408 apply.

AUTH: 37-1-131, 37-48-103, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, MCA

REASON: The board determined it is reasonable and necessary to adopt this rule to set forth program licensure renewal fees and requirements and generate timely needed revenue. Section 37-1-134, MCA, requires the board set licensure and renewal fees commensurate with associated costs. It is estimated that 24 programs will be affected by the new renewal fees and result in \$89,680 of additional annual revenue.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpap@mt.gov, and must be received no later than 5:00 p.m., April 15, 2008.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.paarp.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The Board of Private Alternative Adolescent Residential or Outdoor Programs maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Private Alternative Adolescent Residential or Outdoor Programs administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdpap@mt.gov, or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on February 11, 2008, by regular mail.

11. Mike McCabe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE ALTERNATIVE
ADOLESCENT RESIDENTIAL OR
OUTDOOR PROGRAMS
MICHELE MANNING, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 3, 2008